

**Department of Justice**

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**NEWS RELEASE**

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Paul J. McNulty, United States Attorney for the Eastern District of Virginia, announced that Jason Smathers, a 24 year old software engineer formerly employed at America Online, Inc. ("AOL"), based in Dulles, Virginia, pleaded guilty today in Manhattan federal court to charges pending in the Southern District of New York and the Eastern District of Virginia. The charges included one count of conspiracy to traffic in stolen property and to violate the recently enacted CAN-SPAM law, and one count of trafficking in stolen property. Smathers faces a maximum sentence of 5 years in prison on the conspiracy charge, and a fine of \$250,000 or twice the gross gain or gross loss from the offense. On the charge of trafficking in stolen property, Smathers faces a maximum sentence of 10 years in prison and a fine of \$250,000 or twice the gross gain or gross loss from the offense.

The charges were brought by the United States Attorney's Offices for the Eastern District of Virginia and the Southern District of New York, which coordinated prosecuting the case. The two Districts charged Smathers in two separate criminal informations ultimately consolidated in New York federal court. The charges arose from Smathers' scheme to steal AOL's entire subscriber list and use it to send massive amounts of unsolicited commercial e-mails – known as "SPAM" – to millions of AOL's customers. According to Mr. McNulty, this case is one of the first criminal cases in the nation prosecuted under the CAN-SPAM law. Smathers entered his guilty plea before United States District Judge Alvin K. Hellerstein of the U.S. District Court for the Southern District of New York.

As charged in a criminal complaint filed in New York in May 2003, Smathers, using his skills as a computer engineer and his inside knowledge of AOL's computer system, misappropriated a list of 92 million AOL customer account "screen names" while working at AOL in Dulles, Virginia. The complaint further alleges that in May 2003 a co-conspirator purchased the list from Smathers and used it to promote his own Internet gambling operation. The co-conspirator also allegedly sold the list to other "SPAMmers" for \$52,000.

According to the complaint, Smathers worked in AOL's Dulles office but was not authorized to access or copy AOL's database of approximately 30 million subscribers. In April and May 2003, Smathers, without authorization, used an identification code assigned to another AOL employee, accessed the database and assembled a complete list of AOL's customer account screen names, credit card types (but not credit card numbers) related zip codes and telephone numbers.

A search of Smathers' work computer in May 2004 revealed that in approximately April 2003 Smathers and another individual discussed various techniques by which to SPAM AOL customers, as well as the large profits that could be made from SPAMming. As charged in the complaint and in the criminal informations later filed in New York and Virginia, other co-conspirators used the list to send millions of unsolicited commercial electronic mail transmissions to AOL customers for purposes of marketing herbal penile enlargement pills.

United States Attorney Paul J McNulty said, "This was a groundbreaking prosecution against those who would steal customer information from online services and use it to disseminate junk email to millions of computer users. This joint prosecution should be a shot across the bow to those who engage in computer and internet-based misconduct – we will coordinate our efforts nationwide to target and prosecute multi-district crimes."

The investigation was conducted by the New York, Washington D.C. and Las Vegas U.S. Secret Service Electronic Crimes Task Forces and prosecuted by Assistant United States Attorneys Scott Stein and Andrew Lelling, of the Eastern District of Virginia, and David Siegal, of the Southern District of New York.

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